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FAUZILAH SALLEH

v.

UNIVERSITI MALAYSIA TERENGGANU

B

HIGH COURT MALAYA, KUALA TERENGGANU
MOHD YAZID MUSTAFA J
[CIVIL SUIT NO: 22-02-2009]
16 OCTOBER 2011

C ***ADMINISTRATIVE LAW:*** *Rules of natural justice - Right to be heard - Breach of - Revocation of Master's Degree by University due to allegation of plagiarism - Whether there was a violation of the university's constitution - Whether University partly contributed to commission of plagiarism - Whether plaintiff accorded right to be heard*

D

The plaintiff was awarded a Master's Degree in Marketing Science from the defendant University. She was then offered by the defendant University a three-years PhD course commencing on 23 July 2006 and ending on 22 July 2009. On 22 January 2007, an inquiry was held by the Jawatankuasa Penyiasatan ('the inquiry') where the plaintiff appeared as a witness before a committee. After a lapse of one year, the plaintiff received a letter dated 22 January 2008 from the Registrar of the defendant University informing her that the Chancellor of the defendant University, on the recommendation of the board of the University, had revoked her Master's Degree under cl. 57(1)(b) and cl. 2 of the constitution of the defendant university on the ground that she had committed plagiarism. Aggrieved, the plaintiff filed the present suit claiming that the revocation of her Master's Degree by the defendant University was in violation of cl. 57 of the said constitution and the principle of natural justice. She also asked for a declaration that the revocation was invalid and an order for the return of the degree to her, damages, interests and costs. The two main issues considered herein were (i) whether there was plagiarism and (ii) on the principle of natural justice *ie*, whether the plaintiff had been accorded the due process she deserved, in particular her right to be heard.

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Held (allowing the plaintiff's claims):

I **(1)** Thirty five percent of the plaintiff's thesis (D9) had been taken from the doctoral dissertation of one Prof Madya Dr Nik Kamariah (D10). Although the plaintiff had acknowledged her

sources of information, the plaintiff had failed to footnote the information source on the relevant pages. Further, judicial notice was taken of the supervisor's role in thesis writing. During the writing process, the student's work must be approved by the supervisor. It is the duty of the University (defendant) to issue students writing their thesis with a proper set of writing guidelines. In this case, there was none. Even in the absence of a proper thesis writing guideline from the University or faculty, plagiarism would not have occurred if the plaintiff's supervisor had done his/her job *ie*, reading and vetting the contents and writing style of the student. Therefore, while the plaintiff was found to have committed plagiarism, the defendant had partly contributed to the commission of plagiarism by failing to properly supervise the research. (paras 15, 19 & 20)

(2) Considering the seriousness and gravity of both the charge and punishment, the Board of the University did not hold any first hand inquiry to establish and conclude 'scandalous conduct'. The mode by which the Board arrived at the decision to recommend for degree deprivation was grossly inadequate. The University was dutybound to comply with cl. 57 of the constitution before making such recommendation to the Chancellor. Further, based on the events that took place *ie*, that the plaintiff was invited to attend the inquiry as a witness and not as a person to answer the accusation of plagiarism and that the plaintiff was never supplied with the assessment report of plagiarism, it was clear that the plaintiff was never accorded the right to be heard. It has been well entrenched in Malaysian public law that before depriving someone of his/her rights, the condemned has the right to be heard. The hearing itself must be fair. Otherwise it would be vitiated. (paras 26, 29, 31, 35, 36 & 40)

Case(s) referred to:

B Surinder Singh Kanda v. The Government Of The Federation Of Malaya [1962] 1 LNS 14 PC ***(refd)***

Ketua Pengarah Kastam v. Ho Kwan Seng [1975] 1 LNS 72 FC ***(refd)***

Other source(s) referred to:

The Concise Oxford Dictionary, 9th edn, p 1043

For the plaintiff - Tun Salleh Abas (Fathinajwaa Idris with him)
For the defendant - Othman Bakar (Hazri Haris with him)

Reported by Suhainah Wahiduddin

A

JUDGMENT

Mohd Yazid Mustafa J:

Facts

B **[1]** The plaintiff graduated in 2004 from Universiti Putra Malaysia with BBA (Hons.) in Insurance. She continued her post-graduate studies in the same university for a Master's Degree in marketing. After submitting her thesis which was later approved, she was awarded a Master's Degree in marketing science at the C defendant university convocation on 12 August 2006. At that time, on the basis of her BBA (Hons) in Insurance, the plaintiff was being employed by University Darul Iman, now renamed as University Sultan Zainal Abidin (UniSZA) as a tutor and because of her Master's Degree in Marketing Science awarded by the D defendant University, she was then promoted by her employer (UniSZA) from Grade DG 41 to Grade DG 45.

[2] Because of her Master's Degree in Marketing, she was offered by the defendant University, for a three years PhD course E commencing on 23 July 2006 and ending on 22 July 2009. She had in fact followed a PhD course for one semester and was awarded financial assistance by the Ministry of Higher Education tenable for the duration of the course.

F **[3]** On 18 January 2007 she received a notice from the defendant university requiring her to give evidence as a witness before a committee appointed by the senate styled after as 'Jawatankuasa Penyiasatan'. On 22 January 2007, she appeared before the committee, where a question and answer session had taken place for one hour beginning at 11.30am and ending at G 12.30pm. The minutes of the hearing were produced and marked as exh. P2.

[4] After a lapse of one year, the plaintiff received a letter dated 22 January 2008 from the Registrar of the defendant University H informing her that the chancellor of the defendant university, on the recommendation of the board of the university, had revoked her Master's Degree under cl. 57(1)(b) and cl. (2) of the Constitution of the defendant university on the ground that she had committed plagiarism.

I

[5] Aggrieved by this revocation, the plaintiff filed the present suit claiming that the revocation of her Master's Degree by the defendant university was in violation of cl. 57 and the principle of natural justice. She also asked for a declaration that the revocation was invalid and an order for the return of the degree to her, damages, interest and costs.

[6] Based on the facts and submissions before me, I find that there are two main issues to be decided. First is on the issue of plagiarism, and second, on the principle of natural justice, ie, whether the plaintiff has been accorded the due process she deserved, in particular her right to be heard.

Issue Of Plagiarism

[7] Before deciding on this issue, it is significant that all parties are made clear on the nature of plagiarism. Plagiarism has been defined by *The Concise Oxford Dictionary* (9th edn, at p. 1043) to be the act of taking and using the thoughts, writings, inventions etc. as one's own.

[8] Not satisfied with only one definition, I took the liberty of perusing the websites of old and respected universities of the world as to how they define, and as to what they construe as plagiarism:

[9] Oxford University has defined plagiarism as the copying or paraphrasing of other people's work or ideas into your own work without full acknowledgement. All published and unpublished material, whether in manuscript, printed or electronic form, is covered under this definition.

[10] The various forms of plagiarism are:

i) Verbatim quotation without clear acknowledgement.

ii) Paraphrasing the work of others by altering a few words and changing their order or by closely following the structure of their argument.

iii) Collusion. This can involve unauthorised collaboration between students, failure to attribute assistance received, or failure to follow precisely regulations on group work projects.

iv) Inaccurate citation.

v) Failure to acknowledge.

[11] University of Cambridge has defined plagiarism as submitting as one's own work, irrespective of intent to deceive, that which derives in part or in its entirety from the work of others without due acknowledgement. It is both poor scholarship and a breach of academic integrity.

[12] Examples of plagiarism include copying, quoting verbatim another person's work without due acknowledgement of the source; paraphrasing another person's work by changing some of the words, or the order of the words, without due acknowledgement of the source; using ideas taken from someone else without reference to the originator; submitting someone else's work as part of a candidate's own without identifying clearly who did the work. For example, buying or commissioning work *via* professional agencies such as 'essay banks' or 'paper mills', or not attributing research contributed by others to a joint project.

[13] University of Cambridge also pointed out that acceptable means of acknowledging the work of others (by referencing, in footnotes, or otherwise) vary according to the subject matter and mode of assessment. In this regard, Cambridge recommended that faculties or departments should issue written guidance on the relevant scholarly conventions for submitted work, and also make it clear to candidates what level of acknowledgement might be expected in written examinations. Candidates are required to familiarise themselves with this guidance, to follow it in all work submitted for assessment, and may be required to sign a declaration to that effect.

[14] Yale University, a respected university in the United States of America defines plagiarism as the use of someone else's work, words, or ideas as if they were your own. Thus, most forms of cheating on examinations are plagiarism; but Yale University usually applies the word to papers rather than to examinations.

[15] Against the background of the extractions above, I find that 35% of the plaintiff's thesis (D9) has been taken from the doctoral dissertation of one Prof Madya Dr Nik Kamariah (D10). I also note, however, that the plaintiff acknowledged her sources of information, among others, from SD1. Notwithstanding her acknowledgement, it is noted that plaintiff has failed to footnote the information source on the relevant pages where the intellectual debt occurred.

[16] My views are in line with those of the defendant's witnesses who are PhD holders and possess vast experience as academicians, and are presently attached to various universities (UUM, UMT, UMP and UniSZA). They reached the similar conclusion that the plaintiff had plagiarised, in particular the following regards:

1. First chapter of D9 consisted 30% of the content of D10.
2. Second chapter of D9 consisted 20% of the content of D10.
3. Third chapter of D9 consisted 60% of the content of D10.
4. Fourth chapter of D9 consisted 58% of the content of D10.
5. Fifth chapter of D9 consisted 13% of the content of D10.

[17] Furthermore, the plaintiff in the cross-examination had indeed admitted that some contents of her thesis were similar to that of D10. She also admitted that she had not made footnotes as to her sources of information, in particular the materials from D10, on the belief that it was not necessary as she has acknowledged and named Prof Madya Dr Nik Kamariah the author of D10 in the preface of her thesis.

[18] Besides the above, I also take judicial notice of the supervisor's role in thesis writing. Firstly, thesis writing is an open process, in that, anyone who has any interest in the topic under research is not at any time precluded from viewing the work in progress. In fact a student writing his/her thesis must first obtain approval from the supervisor on the topic to be researched. And all along the writing process, the student's work must be approved by the supervisor. (Kindly refer to the University of Cambridge advice on adherence to the university's writing guidelines).

[19] Based on the extractions on plagiarism as above, I find that it is the duty of the university (defendant) to issue to students writing their thesis with a proper set of writing guidelines. In this case I note that there was none. Even in the absence of a proper thesis writing guideline from the university or faculty, plagiarism would not have occurred if the plaintiff's supervisor had done his/her job, ie, reading and vetting the contents and writing style of the student. Plaintiff's evidence that she was never guided was not challenged, and was accepted by this court.

[20] Based on the above reasoning, while I find that the plaintiff has committed plagiarism, I also find that the defendant has partly contributed to the commission of plagiarism by failing to properly supervise the research, in particular the writing process of D9.

[21] These definitions and constructions of plagiarism are to be read in conjunction with cl. 57 of the Constitutions of the University Malaysia Terengganu:

(1) If any member of an Authority, or any graduate of the University, or any person who has received a degree, diploma, certificate or other academic distinction from the University, is convicted by a court of law of any heinous offence whether within or without Malaysia, or is in the opinion of the Board guilty of scandalous conduct, it shall be lawful for the Chancellor, on the recommendation of not less than two-thirds of all the members of the Board:

(a) to remove him from membership of the Authority; or

(b) to deprive him of any degree, diploma or other academic distinction conferred upon him by the University.

(2) *Scandalous conduct in subsection (1) includes wilfully giving any staff, officer, employee or Authority of the University any information or document which is false or misleading in any material particular in obtaining a degree, diploma, certificate or other academic distinction from the University.* (emphasis added)

[22] Clause 57 provides the university with the power to deprive a degree or any other academic award previously conferred, provided that the following conditions are met:

(i) The deprivation is recommended by two-third of the members of the Board of the University convened to decide the issue.

(ii) The Board of the University must first find an accused guilty of a scandalous act.

[23] The registrar of the university who acted as secretary to the Board was called as witness. He testified that five members of the Board attended the meeting held on 25 July 2007, at which, among other agenda it was to be decided if the plaintiff was to be deprived of the Master's Degree previously conferred.

[24] Under cl. 16 of the Constitution of the Universiti Malaysia Terengganu, the board of directors of the university shall consist of:

(a) Chairman;

(b) Vice-Chancellor;

(c) two members who hold senior posts in public office;

(d) a distinguished representative from the community where the university is situated;

(e) a professor appointed by the senate under para. 17(d);

(f) five members; three members appointed from the private sector; one member appointed from the university alumni; one member appointed either from within or outside the university who, in the opinion of the minister, possesses knowledge and experience to assist the board.

[25] Returning to our first contention, the decision of the Board was made by the proper quorum, as the pertinent section of the Constitution requires the vote of two-third members of the Board. At the material time, the Board of the university comprised of seven members, and five members attended the said meeting. The meeting held on 25 July 2007 was therefore in compliance with the requirement of the University's constitutions.

Issue Of Right To Be Heard

[26] However on the second issue, considering the seriousness and gravity of both the charge and the punishment, which, on the minimum involves the reputation and academic standing of the university, both locally and abroad, I find that the Board of the University did not hold any first hand inquiry to establish and conclude 'scandalous conduct'. The Board merely took note and endorsed the 'Laporan Temubual Jawatan Kuasa Penyiasat' SP7 testified to this effect. I find that in this regard, the mode by which the Board arrived at the decision to recommend for degree deprivation was grossly inadequate. Notwithstanding that the plaintiff committed plagiarism, the University is also duty bound to comply with cl. 57 of the Constitution before making such recommendation to the Chancellor.

[27] On the issue of right to be heard, it is pertinent to understand the chronology of events leading to revocation of the plaintiff's Master's Degree. On 8 January 2007 the plaintiff received a letter from the defendant asking her to appear as a witness before the Jawatankuasa Penyiasatan on 22 January 2007. On that day, plaintiff attended before the Jawatankuasa Penyiasatan and went through a session of question and answer lasting one hour, from 11.30am to 12.30pm. During the session, the plaintiff was confronted by the Jawatankuasa Penyiasatan with the accusation of plagiarism in her thesis. After the session, the plaintiff went home, and two weeks later she received a phone call from Naimah (secretary to Ketua Jawatankuasa Penyiasatan) to go to the university and sign a document which contained the record of what transpired on 22 January 2007. She signed the said document. After a lapse of one year the plaintiff received a letter dated 22 January 2008 from the Registrar of the defendant university informing her that her Master's Degree has been revoked by the Chancellor on the recommendation of the board of director.

[28] Given the sequence of events, I find that the plaintiff was not given the proper right to be heard, for the following reasons:

[29] Firstly, the inquiry held by the Jawatankuasa Penyiasatan on 22 January 2007 was not a show cause proceeding. I find that it was a mere question and answer session, that being, only a normal inquiry. In this regard the plaintiff's presence was required to provide information as a witness to an unspecified matter. I append herewith the contents of the letter which is self explanatory.

Rujukan Kami : KUSTEM/PPS/D/1- 8/10 (17)
Tarikh: 8 Januari 2007
Bersamaan: 18 Zilhijjah 1427H

Puan Fauzilah binti Salleh
No. 16, Taman Tok Jiring Utama
21060 Kuala Terengganu
Terengganu Darul Iman

Puan,

Notis Untuk Memberi Keterangan Kepada Jawatankuasa Penyiasatan Tentang Kes Plagiarism Pelajar Siswazah

Dengan segala hormatnya saya merujuk kepada perkara di atas.

2. Adalah dimaklumkan bahawa puan dipohon hadir bagi membantu Jawatankuasa menjalankan siasatan bagi kes di atas pada tarikh dan tempat seperti berikut:

   Tarikh : 22 Januari 2007

   Masa : 11.30pagi

   Tempat : Bilik Mesyuarat Pusat Pengajian Siswazah

3. Sebarang ketidakhadiran hendaklah dimaklumkan secara bertulis kepada Pengerusi Jawatankuasa. Ketidakhadiran puan tanpa apa-apa makluman, akan membolehkan pihak kami membuat keputusan kes ini dengan tidak mendengar apa-apa penjelasan lanjut dari kami.

4. Kerjasama puan amat dihargai dalam membantu Jawatankuasa menjalankan penyiasatan kes ini. Perhatian dan sokongan puan didahului dengan ucapan ribuan terima kasih.

Sekian, wassalam.

BERKHIDMAT UNTUK NEGARA

Saya yang menjalankan tugas,

t.t

(Prof. Dr. Mohd Azmi bin Ambak)
Pengerusi Jawatankuasa Penyiasatan

s.k. Fail

[30] Secondly, the plaintiff was invited to attend the inquiry as a witness and not as a person to answer the accusation of plagiarism. This finding is supported by the contents of the invitation letter which was tendered as evidence.

[31] Thirdly, the plaintiff was never supplied with the assessment report of plagiarism prepared by SD5 (see exh. D11).

[32] Fourthly, the plaintiff was not supplied with a copy of the complaint letter by SD1. The plaintiff was only given a brief moment to read the said complaint letter at the start of the inquiry. The said letter was taken back from her soon after she finished reading it.

[33] Fifthly, the plaintiff was never supplied with a copy of the note of the inquiry by the committee or its report.

[34] Sixthly, no charge was preferred against her.

[35] Seventhly, Dr. Azmi Ambak (SD5) the chairman of the committee admitted that the inquiry was held only to determine whether there was plagiarism or not.

[36] Lastly, and more disturbing, I note that the committee was simply endorsing the report prepared by one Prof. Abd. Razak, who had been appointed by the university to determine whether there was plagiarism in the plaintiff's Master's thesis.

[37] It has been well entrenched in Malaysian public law that before depriving someone of his/her rights, the condemned has the right to be heard. In *Ketua Pengarah Kastam v. Ho Kwan Seng* [1975] 1 LNS 72, Raja Azlan Shah (Federal Court judge as His Majesty then was) in his splendidly written judgment made the following observation:

> the rule of natural justice that no man may be condemned unheard should apply to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled "judicial", "quasi-judicial", or "administrative" or whether or not the enabling statute makes provision for a hearing

[38] The learned judge continues:

> the second principle is the rule requiring a fair hearing. This is of central importance because it can be used to construe a whole code of administrative procedural rights

[39] The right to a hearing alone is not sufficient. The hearing itself must be fair. Otherwise it would be vitiated. In the well quoted case of *B Surinder Singh Kanda v. The Government Of The Federation Of Malaya* [1962] 1 LNS 14, Lord Denning MR had put it nicely as follows:

> The rule against bias is one thing. The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it.
>
> The Romans put them in the two maxims: *Nemo judex in causa sua*: and *Audi Alteram Partem*. They have recently been put in the two words 'Impartiality' and 'Fairness'.
>
> But they are separate concepts and are governed by separate considerations. In the present case Inspector Kanda complained of a breach of the section. He said that his constitutional right had been infringed. He had been dismissed without being given a reasonable opportunity of being heard.
>
> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them.

[40] In this instant case, I conclude with much confidence that the plaintiff was never accorded the right to be heard.

[41] Based on the above aforesaid grounds, I allow the plaintiff's claims as follows:

1. The plaintiff is re-conferred the Master's Degree.
2. I reinstate her to her former position as an officer of the university at the same rank and salary, enjoying the same benefits and privileges as before she was dismissed, with yearly increment.
3. That plaintiff's bursary to pursue the PhD degree is reinstated.
4. Costs and interests.